



George R. Hodges

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United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN RE:

**DANIEL RAY MITCHELL
BETTY WALLS MITCHELL**

**07-40723
CHAPTER 13**

**AMENDED CONSENT ORDER RESOLVING DEBTORS'
MOTION FOR AUTHORITY TO SELL REAL PROPERTY**

THIS CAUSE coming on to be heard before the undersigned Bankruptcy Judge, and it appearing to the Court that Barclays Capital Real Estate, Inc. dba HomEq Servicing, the creditor, and the Debtors have agreed and consented to the entry of this Order resolving Debtors' Motion for Authority to Sell Real Property pursuant to the agreement of the parties as set forth below:

NOW THEREFORE, with the agreement and consent of the parties, the Court makes the following:

FINDINGS OF FACT

1. On December 17, 2007, the Debtors, Daniel Ray Mitchell and Betty Walls Mitchell, filed a petition with the Bankruptcy Court for the Western District of North Carolina under Chapter 13 of Title 11 of the United States Code.
2. On the date the petition was filed, the Debtors were the owners of real property ("Property") located at 457 Gantts Grove Church Rd, Mooresboro, NC 28114.
3. The Property is subject to the first lien of Barclays Capital Real Estate, Inc. dba HomEq Servicing by Deed of Trust recorded in the Cleveland County Public Registry ("Deed of Trust").

4. Said Deed of Trust secures a Note from the Debtors to WMC Mortgage Corp., in the original principal amount of \$108,800.00, dated April 28, 2004 ("Note"). The Note and Deed of Trust have been transferred and assigned to Barclays Capital Real Estate, Inc. dba HomEq Servicing.

5. On or about August 22, 2008 Debtors' Counsel filed a Motion for Authority to Sell Real Property.

6. The debtors have received an offer to purchase the real property.

7. The payoff on the first mortgage of Barclays Capital Real Estate, Inc. dba HomEq Servicing is substantially higher than the proposed sales price.

8. The debtors requested authority from the court to approve the short sale.

9. On or about August 27, 2008 counsel for Barclays Capital Real Estate, Inc. dba HomEq Servicing filed an objection to the Debtors' Motion.

10. Barclays Capital Real Estate, Inc. dba HomEq Servicing and the Debtors agreed and consented to entry of this Order as shown by the signatures of counsel for the parties appearing below.

NOW THEREFORE, by virtue of the law and by reason of the premises aforesaid, and the consent of the parties, it is Ordered, Adjudged and Decreed as follows:

1. That the debtors shall be and hereby are authorized to enter into a private sale of the real property, subject to Barclays Capital Real Estate, Inc. dba HomEq's right to refuse to accept and approve a "short sale" of this property to the buyers for a purchase price of less than the payoff, with the sale proceeds to be used to pay the expenses associated with the sale, pay off the claim of Barclays Capital Real Estate, Inc. dba HomEq or at any reduced amount that Barclays Capital Real Estate, Inc. dba HomEq may agree to accept as payment in full; and

2. In the event, Barclays Capital Real Estate, Inc. dba HomEq refuses to accept the short sale then Barclays Capital Real Estate, Inc. dba HomEq shall be entitled to a full payoff pursuant to the terms of the Note and Deed of Trust.

3. That the debtors shall be and hereby are ordered to provide the Chapter 13 Trustee with a copy of the HUD-1 Settlement Statement for this sale transaction no later than one week after the closing date; and

4. That the attorney for the debtors shall be and hereby is allowed the presumptive “non-base” fee of \$450 and expenses of \$140.00 for the filing of the Application to Sell Real Property said fee and expenses to be paid through the debtors’ plan; and

Continuation of Consent Order Resolving Motion for Authority to Sell Real Property Case 07-40723

Agreed and consented to this 24TH day of October, 2008.

s/Kimberly A. Sheek
Kimberly A. Sheek
Attorney for Barclays Capital Real Estate,
Inc. dba HomEq Servicing

Agreed and consented to this 24th day of
October, 2008.

/S/ William S. Gardner
William Shellem Gardner, Attorney for
Debtors

No objection this the 27th day of
October, 2008.

/S/ Steven g. Tate, Trustee
Steven G. Tate, Trustee